

Committee on Resources

Subcommittee on Water & Power

Witness Statement

TESTIMONY OF BRUCE C. DRIVER

I. Introduction & Summary

Good afternoon, Mr. Chairman and members of the Subcommittee. My name is Bruce Driver. I have my own law and consulting business in Boulder, Colorado. On behalf of a group of national and western regional and local environmental organizations, I am speaking today on the subject of the transfer of federal water facilities⁽¹⁾ to non-federal owners.

Water facilities owned by the federal taxpayer, even quite small ones, typically affect resource and other values that extend beyond the primary irrigation, power production and municipal and industrial purposes for which these facilities were often originally built. These values include conservation of aquatic and related species, recreation and even property values. These values, protected by federal and other law, are of increasing importance in the rapidly-urbanizing West.

Transfers raise the prospect that these values will be diminished. In theory these transfers also raise the possibility that environmental values could be enhanced. It depends on how the transfer is carried out as well as the terms and conditions of the transfer. The environmental organizations on whose behalf I am testifying today can support transfers of federal water facilities but only if they are consistent with certain principles which I elucidate below. The core principle is that the transfer should predictably enhance the natural environment.

II. Background and context

As of 1992, the U.S. Bureau of Reclamation had constructed 343 water storage reservoirs, 253 diversion dams, nearly 16,000 miles of canals, nearly 37,000 miles of laterals and 54 hydroelectric plants with installed capacity exceeding 14,000 megawatts in the American West.⁽²⁾ Most major rivers and waterways in the West have a Bureau facility on them. In short, the presence of the Bureau in the West is pervasive. Not far behind in some parts of the West is the U.S. Army Corps of Engineers, whose facilities provide water for power and flood control benefits.

There is no question that the Bureau and the Corps have brought considerable economic benefits to the West, mostly in the form of irrigation water supplies, relatively inexpensive hydropower, flood control and, increasingly, recreational amenities. However, we do not think anyone would argue that federal facilities and the water uses they have facilitated have not also significantly contributed to degradation of the aquatic environment.

In the West today there is steadily intensifying pressure to mitigate, restore and protect western aquatic environments. For example, watershed councils whose goals include environmental restoration and protection exist on many, perhaps most, waterways in the West. These organizations were virtually unheard

of only ten years ago.

On the face of it, the pressure to restore and protect results from the application of federal laws like the Endangered Species Act (ESA) and the National Environmental Protection Act (NEPA). More fundamentally, the pressure is linked to and bolstered by the changing demographics of the West.

During the last 15 years the population of the 17 western states grew by about 18 per cent as a whole in comparison with a growth rate of 11 per cent for the remainder of the nation.⁽³⁾ Most of the new westerners live in expanding urban archipelagos like Colorado's Front Range, the Wasatch Front in Utah, and in and around large cities like Albuquerque, Boise, Phoenix, Portland, Seattle, Spokane, Las Vegas and Tucson. However, centers of burgeoning population growth also exist in and near smaller cities like Las Cruces, Yuma, Grand Junction, Reno, and Santa Fe. Pockets of the rural West are also filling up, as in Jackson Hole, Aspen, Ketchum and other resort areas. Of course, population growth is robust again in many parts of California.

The new westerners are placing increasing pressure on the natural environment. In many cases they seek recreational opportunities in adjacent rural areas as an escape from the urban and suburban sprawl which they have helped to create. Simultaneously, the recent arrivals are swelling the ranks of those who care about environmental restoration and protection in the West. These factors provide context for the issues raised by transfer proposals.

III. Issues

Transfer proposals made over the last few years have raised many issues. The following are ten issues of significance to environmental organizations:

1. What is the role of the facility in restoring and protecting the natural environment, including threatened and endangered species, and on recreation? If required, has there been consultation with respect to this facility under section 7 of the ESA?
2. Is the facility proposed for transfer too important in its impact on a watershed or on river management to transfer to non-federal ownership?
3. Will there be meaningful compliance with environmental laws both in the transfer as well as thereafter?
4. Will there be meaningful involvement of all stakeholders in the determination of whether the facility should be transferred as well as the regime under which the facility will be operated after transfer?
5. Is the body of environmental law that would apply to the facility once it is in non-federal ownership together with the transfer plan sufficient to restore and protect the affected natural environment?
6. What is the likely impact of the transfer on urbanizing pressures in the area?
7. How will the regime under which the facility will be operated after transfer be enforced? Is the enforcement mechanism legitimate or is it illusory?
8. Would the new owners of the facility be good stewards of the facility, in particular from the perspective of environmental mitigation, protection and enhancement?

9. Who is benefitting economically from the transfer? Is the distribution of wealth inherent in the transfer fair to the American taxpayer? What incentives toward development or otherwise are created by the distribution of wealth?

10. Will the proposal establish a precedent for other transfers that is appropriate or ill-advised?

IV. Statement of principles

We urge you to review the statement of principles attached to this testimony. It was negotiated and agreed to in 1996, but still seems sound to us, even while it did not anticipate every issue that has been raised by transfers since then. This section of my testimony explains a few of the more important features of the principles.

Environmental enhancement To begin with, we believe that any transfer should enhance the environment. There are two basic reasons for our position. First, a transfer is likely to confer a substantial benefit on the transferee, some of which the transferee should be willing to give back in environmental enhancement, accountability to the public and other similar measures. Second, when the federal government withdraws as owner of a project, we lose some environmental protections for all time, including coverage of the project by the consultation requirements of section 7 of the ESA, NEPA and, perhaps, balanced project management. However, it would seem that the effect of this loss may be offset if the transferees agree to take certain actions to enhance the environment as part of a transfer plan.

Meaningful compliance with environmental laws For us it is imperative that there be no waiver of the application of NEPA, the ESA, the Federal Power Act or other federal environmental laws to either the transfer or to the operation of the facility post-transfer. This means more than simply affording the public a hearing on an already-developed transfer scheme. Indeed, it means that the basic terms of the transfer not be locked in cement by legislation prior to compliance with NEPA, consultation under the ESA or compliance with other federal environmental laws.

Some projects should not be transferred There are likely some facilities that simply should not be transferred because of their importance in watershed management for multiple purposes. In other words, there may be no way to assure that non-federal owners of a facility of this nature will achieve the benefits of the project in a balanced manner.

The need for facility-specific transfer plans We believe that no transfer should go forward without a plan developed after public involvement pursuant to NEPA. Again, to us this means that the terms and conditions of the transfer not be locked in prior to such public involvement.

V. Conclusion It may be that the most important lesson to be learned from the transfer proposals made to date is that no two are alike. What this means to us is that the advisability and appropriate terms and conditions of any particular transfer will vary with site-specific factors. This does not mean that no federal policy can be developed for transfers--indeed our statement of principles is one such set of policies. However, we think that it does mean that the advisability and terms and conditions of any transfer must be developed locally, from the ground up and only after full public involvement.

1. This testimony does not address the transfer of the assets of large federal power production facilities or the federal power marketing administrations which market the power from such facilities. Transfer of these

facilities raises equity and environmental issues that are intertwined with electric industry restructuring and which are quite different from the issues raised by the transfer of water facilities that may contain incidental power production capacity. 2. "1992 Summary Statistics, Water Land and related data, U.S. Bureau of Reclamation, U.S. Department of the Interior," p. 1. 3. "Patterns of Demographic, Economic and Value Change in the Western United States," Pamela Case and Gregory Alward, U.S. Department of Agriculture, Forest Service, Report to the Western Water Policy Review Advisory Commission, August, 1997.

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